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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL P. SCHOEMANN,
JOHN D. YOUNGS, and MARK HEINZE

Appeal 2009-004371
Application 10/709,382
Technology Center 3600

Before LINDA E. HORNER, MICHAEL W. O'NEILL, and
STEFAN STAICOVICI, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown in the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Michael P. Schoemann et al. (Appellants) appeal under 35 U.S.C.

§ 134 from the Examiner's decision rejecting:

(1) claims 1, 2, 8-10, and 15 under 35 U.S.C. § 103(a) as unpatentable over Stein (U.S. Patent No. 6,821,465 B1, issued Nov. 23, 2004) and Io (Japanese Patent Application Publication No. JP 2000-264361 A, published Sep. 26, 2000); and

(2) claims 22-26 under 35 U.S.C. § 103(a) as unpatentable in view of Stein, as applied to claim 1, and the "ordinary skill in the art." Ans. 4.

Appellants cancelled claims 3-7, 11-14, and 16-21. We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

The Invention

The claims on appeal relate to door trim panel including a dual density bolster armrest and integrated components.

Claims 1, 9 and 22, reproduced below, are representative of the subject matter on appeal.

1. A door trim panel, comprising:
 - a cover stock;
 - an armrest coupled to the cover stock and having a first density;
 - an upper energy absorber disposed above the armrest and having a second density higher than the first density; and
 - a lower energy absorber disposed below the armrest and having a third density higher than the first density,wherein the armrest, upper energy absorber and lower energy absorber are formed from a polyolefin bead foam.

9. A vehicle, comprising:
a body including a door; and
a door trim panel, the door trim panel including a cover stock, an armrest coupled to the cover stock and having a first density, an upper energy absorber disposed above the armrest and having a second density higher than the first density, and a lower energy absorber disposed below the armrest and having a third density higher than the first density,
wherein the armrest, upper energy absorber and lower energy absorber are formed from a polyolefin bead foam.
22. A door trim panel, comprising:
a cover stock;
an armrest coupled to the cover stock and having a first density;
an upper energy absorber disposed above the armrest and having a second density higher than the first density, and
a lower energy absorber disposed below the armrest and having a third density higher than the first density and less than the second density
wherein the armrest, upper energy absorber and lower energy absorber are formed from a polyolefin bead foam.

DISCUSSION

Issues

The determinative issues in this appeal are:

- (1) Did the Examiner fail to provide some articulated reasoning with some rational underpinning for the obviousness rejection of claims 1, 2, 8-10, and 15?

(2) Did the Examiner err in concluding that claims 22-26 are unpatentable under 35 U.S.C. § 103(a) in view of Stein and the “ordinary skill in the art”?

Analysis

Issue 1

Appellants contend that the Examiner’s rejection of independent claims 1 and 9 should be reversed since the Examiner failed to establish a prima facie case of obviousness because Io does not teach or suggest a modification of Stein that would result in the claimed invention. App. Br. 7-8. More particularly, Appellants contend that combining Stein and Io in the manner suggested by the Examiner is improper as stretching the application of obviousness to unacceptable extremes. App. Br. 8. Appellants also contend that Stein does not disclose “the type of materials that may be used for the high density polymeric material” and “[n]othing in Stein teaches or suggests that the high density polymeric material is the same as the low density region or that the high density region is . . . a polyolefin bead foam.” App. Br. 9. Appellants also contend that “the Examiner has failed to state why it would have been obvious for one skilled in the art to incorporate the polyolefin bead foam of a window sash protection member into a section of a door trim panel ‘to provide the door trim panel to include the armrest with energy absorbers with excellent shock absorbing buffer taught by [Io]’.” App. Br. 10-11. Appellants also contend that “even assuming that is was proper to combine the references in the manner suggested by the Examiner, there is still no specific teaching or suggestion that the Examiner can point to that would motivate one of ordinary skill in the art to form the upper, lower,

and intermediate[s] sections of Stein from the same material,” except a hindsight reconstruction. App. Br. 11.

The Examiner’s position is that Stein discloses the invention substantially as claimed, but Stein fails to explicitly disclose that the foam is polyolefin bead foam. Ans. 4. The Examiner concludes that it would have been obvious to one having ordinary skill in the art to modify Stein to include the foam to be polyolefin bead foam as taught by Io “to provide the door trim panel to include the armrest with energy absorbers with excellent shock absorbing buffer taught by [Io].” *Id.* In response to Appellants’ argument that there is no suggestion to combine the references, the Examiner maintains that “polyolefin bead foam is used to provided [sic] an armrest with excellent shock absorbing properties as taught by [Io].” Ans. 5. The Examiner also maintains that the conclusion of obviousness is not based upon improper hindsight reasoning. Ans. 6.

The Federal Circuit has stated that “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), *cited with approval in KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). It is improper to base a conclusion of obviousness upon facts gleaned only through hindsight. “To draw on hindsight knowledge of the patented invention, when the prior art does not contain or suggest that knowledge, is to use the invention as a template for its own reconstruction—an illogical and inappropriate process by which to determine patentability.” *Sensonics, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570 (Fed. Cir. 1996)

(citing *W.L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 1553 (Fed. Cir. 1983)).

We agree with the Appellants that the Examiner has not established a prima facie case of obviousness. The Examiner has failed to articulate a reason with some rational underpinning in order to support the modification of Stein by the teachings of Io. The Examiner's rationale of "to provide the door trim panel to include the armrest with energy absorbers with excellent shock absorbing buffer taught by [Io]" does not articulate sufficient reasoning with some rational underpinning as to why one of ordinary skill in the art would consider modifying the high density polymeric material 16 of Stein with the polyolefin bead foam of the protective layer A for sashes of Io. More particularly, the Examiner has not explained why replacing the high density polymeric material 16 of Stein with the polyolefin bead foam of Io would necessarily meet the claim limitations of the third density of the lower energy absorber and the second density of the upper energy absorber being higher than the first density of the armrest as recited in claims 1 and 9, especially since Stein already discloses a door trim panel with a shock absorbing structure in which the armrest 14 is made from a low density material such as expanded polypropylene (Stein, col. 6, ll. 10-11), *i.e.*, a polyolefin bead foam. Thus, absent hindsight, we see no reason, and the Examiner has not provided an adequate articulation of a reason, why a person of ordinary skill in the art would have been led to modify Stein by the teachings of Io in the manner suggested by the Examiner.

In view of the foregoing, we do not sustain the rejection of claims 1, 2, 8-10, and 15 under 35 U.S.C. § 103(a) as unpatentable over Stein and Io.

Issue 2

Appellants contend that although the Examiner acknowledged that Stein does not disclose both the high and low density material regions to be formed from polyolefin bead foam, the Examiner failed to address how this deficiency was overcome in the rejection of claims 22-26 (in contrast, to the rejection of claims 1, 2, 8-10, and 15 where Io was applied in an attempt to remedy the deficiency). App. Br. 13. Appellants also contend that the Examiner acknowledged that Stein does not disclose varied ranges of densities for the first, second, and third densities. *Id.* Appellants contend that the Examiner fails to provide any evidence, such as a case citation, to support his conclusion that it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide varied ranges of densities since it has been held to be within the general skill of a worker in the art to use the available foam with required density as specified by the design specification which would provide the desired level of protection for the passengers in the event of a side impact. App. Br. 13-14. Appellants also contend that the Examiner is defining the problem in terms of its solution and thus, is using improper hindsight in the selection of the prior art references for obviousness. App. Br. 14. Appellants contend that the present invention does not just arbitrarily assign different density ranges to various components, but instead optimizes the second density of the upper energy absorber and the third density of the lower energy absorber for male and female passengers, respectively. *Id.* Appellants also contend that Stein does not address or in any way discuss that the two high density material regions may be formed from not only the same material, but also from a polyolefin bead foam of two different densities. *Id.*

The Examiner's position is that Stein discloses the invention substantially as claimed, except that Stein fails to disclose varied ranges of densities for the first, second, and third densities. Ans. 5. The Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made "to provide varied ranges of densities for the first, second and third densities, since it has been held to be within the general skill of a worker in the art to use the available foam with required density as specified by the design specification which would provide the desire[d] level of protection for the passengers in the event of a side impact." *Id.*

In rejecting claims as unpatentable on the basis of obviousness, the Examiner must provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l. Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007). Moreover, rejections based on 35 U.S.C. § 103 must rest on a factual basis. In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967).

We agree with Appellants that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning. The Examiner has failed to make any factual findings with respect to where Stein discloses the use of polyolefin bead foam for the armrest, upper energy absorber, and lower energy absorber. The Examiner has also failed to provide any authority for his generalized statement that it has been held to be within the

general skill of a worker in the art to use the available foam with required density to provide the desired level of protection for the passengers in the event of a side impact. Accordingly, we find the Examiner's legal conclusion of obviousness is not supported by facts and thus, cannot stand.

In view of the foregoing, we do not sustain the Examiner's rejection of claims 22-26 under 35 U.S.C. § 103(a) as unpatentable in view of Stein, as applied to claim 1, and the "ordinary skill in the art."

CONCLUSIONS

The Examiner erred in combining Stein and Io to reject claims 1, 2, 8-10, and 15 under 35 U.S.C. § 103(a) as unpatentable because the Examiner failed to provide an articulated reasoning with some rational underpinning for the rejection.

The Examiner erred in combining Stein and the "ordinary skill in the art" to reject claims 22-26 as unpatentable under 35 U.S.C. § 103(a).

DECISION

We reverse the Examiner's rejection of claims 1, 2, 8-10, and 15 under 35 U.S.C. § 103(a) as unpatentable over Stein and Io and the Examiner's rejection of claims 22-26 under 35 U.S.C. § 103(a) as unpatentable in view of Stein, as applied to claim 1, and the "ordinary skill in the art."

REVERSED

Appeal 2009-004371
Application 10/709,382

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WOOD, HERRON & EVANS, LLP (LEAR)
2700 CAREW TOWER
441 VINE STREET
CINCINNATI, OH 45202